IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4595 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAMESHBHAI D PATANWADIA - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR MI HAVA for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3, 1.2.4,1.2.5
MR ND GOHIL, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/11/2006

ORAL JUDGMENT

1. Shri M.I. Hava, learned counsel for the petitioners. Shri N.D. Gohil, learned AGP for the State. Heard.

2. Present is a petition under Article 227 of the Constitution of India, where under the petitioner claiming to be a public charitable trust, registered under the provisions of the Bombay Public Trusts Act, proposes to challenge the order passed by the Competent Authority/Agricultural Lands Tribunal, order passed by the appellate authority and the Revenue Tribunal in revision.

3. Short facts necessary for disposal of the present matter are that the petitioner filed a return before the Competent Authority under the provisions of the Gujarat Agricultural Lands Ceiling Act, 1960. At the time of hearing, it was observed that the petitioner was entitled to 27 Acres of land while it was holding more than 105 Acres, excess land was declared surplus. The matter was taken in appeal and the matter was remanded back. It was thereafter held by the Competent Authority that the petitioner would be entitled to have 30 Acres of land, an appeal was again preferred and the matter was again remanded. Thereafter, it was submitted by the

present petitioner before the Competent Authority/ALT that they are a Trust registered under the provisions of the Bombay Public Trust Act, they have large number of cattle with them, the land in dispute is grass land where grass grows naturally, therefore, it could not be deemed to be agricultural land and as the Trust was having its operations in Vadodara and Haripura, the Trust would be entitled to 2 units. The argument did not find favour with the Competent Authority/ALT, it accordingly declared 86 Acres and 16 Gunthas as surplus land. Being aggrieved by the said order, the petitioner took up the matter in appeal before the Deputy Collector. The Deputy Collector, in his order dated 9.9.93 referred to the grounds raised in the appeal memo, but however, ultimately held that the order passed by the Competent Authority/ALT was in accordance with law. The petitioner, being aggrieved by the said order, took up the matter before the Revenue Tribunal in revision application no. TEN.B.S. 47/94. The revision application came to be dismissed on 25th

August, 1994.

4. Being aggrieved by the said order, the petitioner is before this Court.

5. The petition originally did not raise the question of applicability of Section 3[1][d] [Unamended] of the Gujarat Agricultural Lands Ceiling Act, 1960. By way of amendment incorporated in the petition, it is submitted before the Court that in view of the judgment of this Court, in the matter of **Shri Ranpur Khoda Dhor Panjarapole v. State of Gujarta & Ors.[36 [1] GLR 597]**, the entire area possessed by the petitioner would be exempt from the provisions of the Ceiling Act.

6. Shri Hava, learned counsel for the petitioner submits as under:-

[a] That it was bounden duty of the Tribunal and the subordinate authority to implement the provisions of Section 3[1][d] and see that the petitioner is not held liable to surrender the land.

[b] Even if the question relating to the

petitioner's exemption was not raised by the petitioner before the Revenue Tribunal, then, too, it was the duty of the Tribunal to see that no injustice is caused to the petitioner.

[c] That in view of Section 3[1][d][Unamended], the petitioner could not be declared to be in possession of the excess land.

[d] As the land in question is grass land and as the circular of the State Government says that for maintaining 100 heads of cattle at least 20 Acres of land would be required and as the petitioner, at the material time was possessed of 500 plus heads of cattle, the land could not be declared surplus.

[e] That the action of the authorities is ultra vires the Act and the authorities have acted beyond the jurisdiction conferred upon them.

7. On being asked that whether the Trust Deed has been filed before any of the authority, Mr. Hava, learned counsel for the petitioner fairly submitted that such copy of the Trust Deed was never filed either before the Competent

Authority/ALT or before the appellate authority or before the Revenue Tribunal or before this Court. Section 3[1][d] provides that particular land shall stand exempted from the provisions of the Act, that is, lands which are property of the trust xxx xxx. For proving the fact that the petitioner is a public trust and it has been incorporated or constituted for a particular reason or purpose, submission of the Trust Deed was the requirement. In absence of the Trust Deed, no authority or Court would be able to hold that the petitioner is a registered public trust and it has been incorporated or constituted for some public purpose and it would be entitled to certain benefits flowing from the Bombay Public Trust Act or from any other Act which provides further reliefs to the public trust.

8. Section 3[1][d] cannot be applied in air. For its application, it needs a particular factual foundation. A submission by the petitioner that it is a public trust would in itself be not sufficient. The fact could be proved by

producing a certificate, a copy of certificate or some document issued by the Competent Authority.

9. So far as the duties cast upon the authorities are concerned, one must not forget that the law requires the said authority/Competent Authority to issue a notice to the persons to inquire into their entitlement, verify the assertions and the statements. When somebody claims exemption, then, a duty is cast upon him to satisfy the judicial conscience of the Competent Authority that his case does not fall outside the scope of the exemption clause. To claim exemption is a personal right of an applicant. If he does not claim such exemption, the authorities who do not know the facts, cannot thrust exemption upon anybody. The authority which has to decide the matter or the Court which has to deliver the judgment would know the facts which are produced before it and are available on the records. True it is that it is the bounden duty of the Court or a quasi-judicial Tribunal to decide in accordance with law, but the facts must be

provided to the Court so that the Court examines the facts on the anvil of law and then decides the matter. In the present matter, the question that the present petitioner was entitled to exemption under Section 3[1][d] was not raised before the Competent Authority/ALT or even before the Deputy Collector or before the Revenue Tribunal. The petitioner had been fighting all through on two counts that each of the trustee would be entitled to one unit and if not, then, in view of the operation area of the trust, the petitioner would be entitled to two units. If the foundation is not laid, then, construction cannot be made on a foundation which is yet to be founded. In the present case, the petitioner, though claims that it is a public trust and whole of its property is exempt from the application of the provisions of the Ceiling Act, for the reasons best known to it did not submit before the authority that it is a public trust and it is entitled to such exemption. I fail to understand the propriety of the argument that even if the petitioner does

not provide any material before the authorities, then too, it was the duty of the authority to look into the facts which were available, examine the same and then hold in favour of the petitioner that they being public trust registered under the Bombay Public Trust Act would be entitled to exemption. The opening words of Section 3[1][d] are;

"The following lands shall be exempted from the provisions of this Act, that is to say:
[d] lands which are the property of a public trust for an educational purpose, hospital, Panjrapole, Gaushala or an institution for public religious worship, provided that the entire income of such land is appropriated for the purpose of such trust;"

Explanation appended to Clause-[d] provides that a certificate granted by the Collector after holding an inquiry, that the conditions mentioned in the said clause are satisfied by a public trust shall be conclusive evidence in that behalf.

10. Undisputedly, the petitioner did not approach to the Collector to obtain such certificate. The Collector, of his own, could not verify the

facts. The Collector was not obliged to issue a certificate in favour of the petitioner when it was not asked for by the petitioner. It is too easy to say that duty is cast upon the other side to decide a particular thing in a particular manner, but why the person who reminds other of his duties forgets his own duties. The present petitioner, which was to be benefited by the exemption clause was sleeping over all his rights, it did not think it prudent nor did it act prudent. It simply submitted before the authority that either each of the trustee be given one unit or the trust be given two units. The question relating to Section 3[1][d][Unamended] was not raised before the Tribunal.

11. Assuming for a minute that the petitioner had raised such ground in its appeal memo before the Deputy Collector and the question has been so posed in the appellate order by the Collector and that the Collector did not decide the said question, then, it was again the duty of the petitioner to bring the fact to the notice of

the Revenue Tribunal that such important question was raised and as the answer to the question would have a material bearing on the rights of the parties therefore under the circumstances, either the matter be remanded back to the Collector or Agricultural Land Tribunal/lower authority who should again take up the matter, consider the question and decide the rights of the parties.

12. Unfortunately, reminder of bounden duty cast upon the authorities is coming from a person who does not know what are his rights, what are his duties and what are his legal obligations.

13. True it is that in the matter of Ranpur Khoda Dhor Panjarapole v. State of Gujarat & Ors. [1995 [1] GLR 597], the Court has considered the effect and impact of Section 3[1][d][Unamended], but the said interpretation cannot be made applicable to the case of the present petitioner in absence of the factual foundation.

14. The authorities were right and justified in deciding against the interest of the present petitioner. The petition deserves to and is

accordingly dismissed. Rule is discharged. Interim relief granted earlier stands vacated. No costs. If the petitioner has failed to prove that it is a registered public Trust, question of holding 100 or 500 cattle would lose their importance. The action of the authorities cannot be held to be ultra vires the act in view of the discussion aforesaid.

15. At this stage, learned counsel for the petitioner submits that the present petition had been filed both under Articles 226 and 227 of the Constitution of India and it be so mentioned.

16. In the opinion of this Court, present cannot be treated to be a petition under Article 226 of the Constitution, because, the petitioner has not prayed for establishment of one of its fundamental right, nor is challenging any administrative order directly under Article 226 of the Constitution. In the present matter, the petitioner is coming through a proper channel and is seeking to challenge the orders passed by the subordinate authorities. In such a case, the

High Court has to exercise its powers of superintendence and it can only issue a writ if it finds that the error is apparent on the face of the records and the order deserves to be quashed. I will reiterate that present is a petition under Article 227 of the Constitution of India.

[R.S. GARG, J.]

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